

Appl. No. 10/008,670
Amdt. dated April 26, 2004
Reply to Office action of Dec. 29, 2003

REMARKS/ARGUMENTS

Claim Rejections Pursuant to 35 U.S.C. § 102 - Novelty

The Office action rejects claims 1-4, 7-12, 16-19, 22-25, 89-92, 95 and 100-103 as anticipated by U.S. Patent No. 5,350,904 to Kemske et al. In the Office action, it is stated that “[t]he packaging material [of Kemske] includes cuts or score lines to form an indentation pattern for uniform heating result.” Claims 1-3 and 89-91 are independent claims, and the remaining claims depend from and include the limitations of one or more of the independent claims.

a. Claim 1

While Kemske does disclose cut or score lines, we disagree that scoring is used in the same way and that Kemske forms an indentation pattern as that term is used in claim 1 and others. To clarify the inherent difference between Kemske and claim 1, claim 1 is amended herein to include the limitation of “wherein the scored impression substantially maintains the integrity of the microwave interactive layer.” With respect to claim 1, paragraph 0049 of the present application indicates:

In a first embodiment, a blanking die, which normally comprises a sharp cutting edge to cut out the desired shape of a packaging blank from sheets of material or from a web, may be further formed with blunt scoring edges. The blunt edges score indentation lines in the microwave packaging material according to any of numerous patterns that may be designed to provide tailored cooking enhancements for the particular food product being cooked.

In paragraph 0049, it is recited that the blunt scoring edges score indentation lines in the microwave packaging material. Through use of “blunt” scoring edges, the operation of “scoring” discussed in the present application does not involve cutting but rather involves the formation of an indentation. Further, paragraph 0053 indicates, “[a]n indentation line 116 scored or compressed into the microwave packaging material 100 is shown in FIG. 1.” As shown in Fig. 1, for example, the microwave interactive layer (e.g., the polyester substrate 102 and aluminum layer 104) forms an indentation 116 by way of the scored impression, but the indentation does not cut through the polyester substrate 102 and aluminum 104.

In contrast, Kemske involves “scoring, cutting, etching, stamping, printing, or other methods to disrupt the conductive coating of the susceptor means.” See Kemske Col. 3, lines

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17-19. See also, Kemske Col. 5, lines 54-62 (“ . . . the conductivity of the metallized film is broken by cuts or scores 15 . . . ”). To reflect the substantial difference between the teaching of Kemske and the invention of claim 1, claim 1 has been amended to recite “wherein the scored impression substantially maintains the integrity of the microwave interactive layer.” It is believed that this limitation was present in the claim through use of the term “scored impression”; however, the limitation was added to the claim to clarify the scope. As amended, it is believed that claim 1 is not anticipated by Kemske and in form for allowance, and such indication is respectfully requested.

b. Claims 2-3

Claim 2 is amended to include the limitation of “wherein the indentation pattern maintains the integrity of the microwave interactive layer.” Claim 3 is amended similarly. In contrast to claim 1, claims 2 and 3 do not explicitly recite a scored impression. Nonetheless, when an indentation pattern is formed by other means, such as in a forming mold, the indentation pattern substantially maintains the integrity of the microwave interactive layer, as recited in amended claims 2 and 3. As discussed above, Kemske involves “scoring, cutting, etching, stamping, printing, or other methods to disrupt the conductive coating of the susceptor means” and does not substantially maintain the integrity of the microwave interactive layer. Once again, it is believed that the term “indentation pattern” possessed the added limitation but for clarity claims 2 and 3 have been amended. It should be noted, that the term “substantially” as used in the claim amendment is meant to indicate the formation of the impression may cause minor nicks, abrasions, or the like, in the microwave interactive layer.

c. Claims 89-91

As discussed above with regard to claims 1-3, Kemske involves cutting the susceptor. Kemske, however, does not disclose or suggest providing an indentation pattern in the substrate, as opposed to the susceptor, as provided in claims 89-91. Thus, for at least this reason, Kemske does not anticipate or render obvious the subject matter of claims 89-91. As such, claims 89-91 are believed in form for allowance and such indication is respectfully requested.

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d. Dependent Claims 4-25 and 92-103

The dependent claims include the limitations of recited independent claims. For at least the reasons cited above with regard to the independent claims 1-3 and 89-91, it is believed that the associated dependent claims are also not anticipated by Kemske. Thus, it is believed that the dependent claims are in form for allowance, and such indication is respectfully requested.

e. Dependent Claims 92, 96-98, and 101-103

In the Office action, it is further stated that “[t]he various patterns shown in Figures 1, 7, 15, 16, 19, 21, 24 and 26-29 inherently include convex and concave channels for the claimed function of allowing movement of moisture.” Kemske does not specifically recite or mention the function of allowing movement of moisture. To support a rejection based on alleged “inherent” properties of a reference, “the extrinsic evidence must make clear that the missing descriptive matter is necessarily present in the thing being described in the reference, and that it would be so recognized by persons of ordinary skill in the art. The mere fact that a certain thing may result for a given set of circumstances is insufficient.” MPEP § 2112.

U.S. patent 4,641,005 recited in column 5, line 24 of Kemske and incorporated by reference, indicates that a susceptor is on the order of 40-700 Angstroms. See 4,464,005, Col. 4, line 37. Note, 1 Angstrom = 10^{-10} m. It seems that a cut in a 700 Angstrom thick susceptor, is not likely to allow movement of moisture between a food item and an underlying susceptor element. It is certainly not necessarily the case, that 700 Angstrom deep cuts would allow movement of moisture to achieve the moisture migration as provided for in claims 92, 96-98, and 101-103. Thus, for this additional reason, it is believed that claims 92, 96-98, and 101-103 are not anticipated by Kemske and in form for allowance, and such indication is respectfully requested. Additional distinctions with respect to other dependent claims are not specifically recited herein.

Claim Rejections Pursuant to 35 U.S.C. § 103 - Obviousness

The Office action rejects claims 5, 6, 13-15, 20, 21, 93, 94 and 96-99 as obvious in view of the combination of Kemske in view of U.S. Patent No. 6,204,492 to Zeng et al. or U.S. Patent No. 5,698,127 to Lai et al. Applicants submit this rejection is moot in view of the amendment of

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claims 1-3 herein and the analysis above with respect to the rejection of the balance of the claims in view of Kemske. Applicants therefore further request the rejection of claims 5, 6, 13-15, 20, 21, 93, 94 and 96-99 be withdrawn.

Reinstatement of Withdrawn Claims

Applicants believe independent claims 1-3 and 89-91 are allowable as amended herein. Claims 21-46, therefore, depend from allowable independent claims. Pursuant to 37 C.F.R. §§ 1.142(b) & 1.143, Applicants request that claims 26-41 presently withdrawn from consideration as claims directed to non-elected species be reconsidered and the requirement for restriction withdrawn.

Conclusion

Applicants believe that claims 1-41 and 89-103 are allowable and request reinstatement of claims 26-41 and issuance of a patent to all claims remaining in the application.

Respectfully submitted this 26th day of April 2004.



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